

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 7 - A-04

Subject: Physician Participation in Soliciting Contributions from Patients

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Referred to: Reference Committee on Amendments to Constitution and Bylaws
(Mary W. Geda, MD, Chair)

1 Solicitation efforts, whereby physicians approach patients for various types of contributions, should
2 be for the purpose of community improvement.¹ In addition, they may provide an opportunity for
3 grateful patients to express their appreciation for well provided care. If they do not shift the focus
4 of the patient-physician relationship away from the patient's welfare and are conducted in a manner
5 that respects patient dignity and rights,² and benefits the community, solicitation activities can
6 constitute an appropriate use of physicians' influential role in society.

8 PHYSICIANS SOLICITING CONTRIBUTIONS FROM PATIENTS: BACKGROUND

10 Fundraising for hospitals, medical schools, and other health care institutions with which physicians
11 are affiliated probably presents the most common instance of physicians soliciting contributions
12 from patients. Physicians may be asked to approach patients for financial donations to help support
13 current activities or specific expansion plans. For example, development funds might be raised to
14 build a new structure in a health care complex, recruit faculty and trainees, support research
15 activities, or improve patient care.³

17 Alternatively, solicitation may be for purposes that fall outside the health care arena. For example,
18 a physician participating in a community service might ask patients to donate time or material
19 goods for that purpose. In rare instances, physicians may be inclined to ask for a particular service
20 or personal gift, for example from a patient who is an accountant, a manufacturer, or a merchant.

22 It has been argued that physician solicitation makes patients aware of tangible needs that
23 physicians, the health care sector, or the community may have and that patients can help meet.³
24 Another reason used to support the solicitation of patients by physicians is that grateful patients can
25 be generous funding sources for hospitals. In recent years, contributions from grateful patients –
26 those with particular reason to be appreciative toward a physician or an institution – represented
27 90% of private donations to major medical centers, after being referred by their physicians or
28 approached by development officers.⁴ Patients who are looking for an opportunity to donate may
29 welcome a solicitation request as an opportunity to express appreciation for health care that was
30 received or to demonstrate support for a particular initiative.

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1 On the other hand, some patients may find solicitation on the part of a physician and object to the
2 undue pressure that a physician's request may create for the patient. Physician involvement in
3 solicitation activities can raise other concerns, including possible violation of privacy and
4 confidentiality of medical information.

5
6 Through this report, the Council on Ethical and Judicial Affairs aims to help physicians identify
7 appropriate ways they can be involved in soliciting contributions from patients, without
8 compromising their professional relationship and responsibility.

9
10 **PROFESSIONAL CONSIDERATIONS**

11
12 *Patient Welfare*

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14 Physicians must take the outmost measures to ensure that solicitation does not interfere with the
15 patient-physician relationship or interrupt the delivery of high quality professional care. While a
16 physician's involvement in solicitation activities may benefit the community, it does not
17 immediately help further the patient's welfare for which the physician primarily is responsible.
18 Such a request, therefore, falls outside the traditional patient-physician relationship. That being
19 understood, a physician is not precluded from participating in solicitation activities.

20
21 In particular, physicians should be sensitive to the fact that some patients may be made uneasy by
22 their physician's requests for contributions. Indeed, direct solicitation in the context of the patient-
23 physician-relationship at least may create the perception that the patient's welfare is not the
24 physician's first priority, diminishing patient trust in the integrity of the relationship. The closer to
25 the clinical encounter, the more likely that solicitation requests may result in these negative
26 perceptions. This is one reason some physicians are reluctant to invite contributions from their
27 patients at all – and especially during clinical encounters.⁵ The greater the separation between the
28 request and the clinical encounter, the more acceptable the solicitation is likely to be.

29
30 *Mitigating Concerns of Undue Pressure*

31
32 Physicians also should be careful to avoid situations in which requests for contributions may create
33 a sense of obligation for their patients to donate. Indeed, patients who already are in a vulnerable
34 role may feel undue pressure to comply with solicitation requests in order to assure professional
35 care of the highest quality. The magnitude of these concerns may vary with the nature of the
36 patient-physician relationship. For example, a patient may be more compelled to meet the request
37 of a psychiatrist whom the patient sees regularly than that of a radiologist who only performs a
38 patient's mammography annually. The assumption that contributions can result in preferential
39 treatment seems reasonable given that some hospitals already provide special amenities for large
40 donors. Regardless of whether these perceptions are accurate, physicians must be cautious not to
41 exploit patient vulnerabilities for the purpose of obtaining donations.

42
43 Concerns regarding whether gifts are fully voluntary may persist when physicians, acting outside
44 their professional role, solicit contributions from community members, some of whom may be their
45 patients, for non-health related matters, such as for a charitable organization. To mitigate these
46 concerns, physicians should seek to separate these activities from their medical role.

47
48 When a patient initiates the discussion regarding how to make a contribution, the willingness to
49 give may be assumed, and it would be appropriate for the physician to familiarize the patient with

1 existing initiatives or to refer the patient to fundraising personnel. (Ethical issues that arise when
2 patients offer personal gifts to their physicians have been addressed in a separate CEJA Report.⁶)
3 The voluntary nature of the donation also is preserved when information is simply made available,
4 for example in the reception area.

5
6 Simply making fundraising literature available in their offices for patients has another benefit. It
7 helps physicians avoid privacy and confidentiality concerns that their involvement in solicitation
8 can raise.

9
10 *Privacy and Confidentiality*

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12 Patients are encouraged to share sensitive information to enable physicians to provide more
13 effective care. In exchange, physicians have a responsibility to hold this information in confidence
14 (Opinion E- 5.05, “Confidentiality”) and to protect patient privacy in all its forms, including
15 informational privacy (E-5.059, “Privacy in the Context of Health Care”; H-315.983, “Patient
16 Privacy and Confidentiality,” AMA Policy Database).^{7, 8, 9} Such a commitment may be undermined
17 when physicians, without having received specific permission from patients, send personalized
18 solicitation letters to patients’ homes, where others may notice them, or when physicians
19 communicate patient information to third parties, such as the fundraising arm of a health care
20 institution.¹⁰

21
22 New Privacy Protections

23
24 The implementation of the privacy rule under the Health Insurance Portability and Accountability
25 Act limits physicians’ (and hospitals’) ability to use and disclose protected health information for
26 fundraising activities. In particular, only two types of protected health information can be used
27 without specific permission from patients:

- 28
29 - Basic demographic information relating to an individual (which usually consists of
30 name, address, age, gender, insurance status, but specifically excludes any information
31 regarding medical condition, nature of services rendered, and department rendering the
32 services), and
33
34 - Dates of health care provided to an individual.

35
36 Where medical service delivered or the diagnosis is identifiable by the nature of the physician’s
37 practice, permission from the patient should be obtained prior to divulging any information. Use in
38 fundraising of protected health information other than basic demographic information requires the
39 patient to provide specific authorization. As part of the process patients must be assured that
40 medical care is not contingent on their authorization. Moreover, all written fundraising
41 communications sent to the patient must include a description of how a patient may be removed
42 from receiving additional messages or materials. Covered entities must make reasonable efforts to
43 ensure that such opt out requests are promptly honored.¹¹

44
45 **INVOLVEMENT CONSISTENT WITH PROFESSIONAL OBLIGATIONS**

46
47 Most of the concerns described above can be averted if physicians refrain from any involvement in
48 the solicitation of their own patients. Physicians still could participate in solicitation activities – for

1 example, by speaking at community fundraising events or issuing a call for contributions in the
2 newsletter of their health care institutions or through the use of other media.

3
4 However, some physicians, their institutions, and health care philanthropists are reluctant to
5 eliminate solicitation from the patient-physician relationship altogether. Indeed, some of the same
6 considerations that may be cause for concern – in particular the privileged relationship and
7 influential status that some physicians enjoy with their patients – make physicians uniquely
8 effective at successfully soliciting contributions.

9
10 Generally, physicians should avoid directly soliciting their patients. Indeed, solicitation in the
11 context of the patient-physician relationship risks bringing into question the focus of the
12 relationship, as well as the voluntary nature of contributions. At the very least, solicitation must
13 not occur during the clinical encounter. Solicitation is likely to be less ethically problematic the
14 further removed it is from the clinical encounter and from a regular patient-physician relationship.

15
16 As noted, some other more detached ways of reaching patients – by making materials regarding
17 opportunities to give available for patients to take, for example – are likely to be more appropriate.
18 Those that rely on assistance from third parties, such as fundraising personnel, should only be
19 conducted in a way that protects the privacy and confidentiality of patient information.

20
21 It also has been suggested that concerns would be eliminated by restricting physician solicitation to
22 former patients. However, determining when a patient becomes a former patient is nearly
23 impossible. Indeed, patients sometimes re-enter a physician’s practice after several years, e.g. if a
24 patient experiences a relapse. Moreover, other personal characteristics (whether the patient is
25 healthy, sick, or dying; whether the patient is particularly wealthy) may be at least as relevant and
26 yet as ambiguous.

27 28 CONCLUSION

29
30 Donations play an essential role in sustaining state-of-the-art facilities and research, and can
31 represent a unique opportunity for some individuals to express their appreciation or support for the
32 health care system. Arguably, these benefits have justified physician participation in certain
33 fundraising activities. However, physicians should rely only on approaches that place their
34 patients’ interests as paramount, help ensure that donations are fully voluntary and unrelated to the
35 quality of care patients will receive,¹² and preserve the privacy and confidentiality of patient
36 medical information.

37 38 RECOMMENDATIONS

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40 The Council on Ethical and Judicial Affairs recommends that the following be adopted and the
41 remainder of this report be filed:

42
43 Donations play an important role in supporting and improving a community’s health care.
44 Physicians are encouraged to participate in fundraising and other solicitation activities
45 while protecting the integrity of the patient-physician relationship, including patient privacy
46 and confidentiality, and ensuring that all donations are fully voluntary. In particular:

- 47
48 (1) Appropriate means of soliciting contributions include making information available in
49 a reception area and speaking at fundraising events. Physicians should avoid directly

1 soliciting their own patients, especially at the time of a clinical encounter. They should
2 reinforce the trust that is the foundation of the patient-physician relationship by being
3 clear that that patients welfare is the primary priority and that patients need not
4 contribute in order to continue receiving the same quality of care.

5
6 (2) The greater the separation between the request and the clinical encounter, the more
7 acceptable the solicitation is likely to be.

8
9 (3) When physicians participate in solicitation efforts as members of the general
10 community, they should seek to minimize perceptions of overlap with their
11 professional roles.

12
13 (4) Physicians in institutions that rely on fundraising personnel for donation requests
14 should work to protect privacy and confidentiality of patient information. In particular
15 physicians should ensure that any patient information used for solicitation activities
16 reveals only basic demographic data, not personal health information. When the
17 medical service delivered or the diagnosis is identifiable by the nature of the
18 physician's practice or the physician's specialty, permission from the patient should be
19 obtained prior to divulging any information to third parties.

20
21 (5) When patients initiate requests to contribute, physicians should refer them to
22 appropriate sources of information or fundraising personnel.

23
24 (New HOD/CEJA Policy)

Fiscal Note: Less than \$500.00

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- ⁷ Opinion 5.05, "Confidentiality"
- ⁸ Opinion 5.059, "Privacy in the Context of Health Care"
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- ¹⁰ Christopher Cloud, "Fundraising hits a privacy barrier; HIPAA rule will force healthcare organizations to rethink development outreach," *Modern Healthcare* Jan 2003; 21.
- ¹¹ 45 CFR §164, "Security and Privacy"
- ¹² Finley C, "Gift-giving or influence peddling: can you tell the difference," *Phys. Ther.* 1994; 74(2): 143-147; discussion 147-148